

2005 WL 469065 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 14, 2005

***1** The Honorable George H. Bailey
Member
South Carolina House of Representatives
District 97 - Dorchester County
333 - A Blatt Building
Columbia, South Carolina 29201

Dear Representative Bailey:

By letter dated January 13, 2005, you requested that this Office issue an opinion concerning whether members of the Dorchester County Transportation Committee may serve simultaneously on the Dorchester County Transportation Authority without violating the dual office holding prohibition of the South Carolina Constitution. We advise that a member serving on the Dorchester County Transportation Committee would violate the dual office holding prohibition if simultaneously holding a position on the Dorchester County Transportation Authority.

Article XVII, Section 1A of the South Carolina Constitution provides that "no person may hold two offices of honor or profit at the same time..." with exceptions specified for an officer in the militia, a member of a lawfully and regularly organized fire department, a constable and a notary public. For this provision to be contravened, a person concurrently must hold two offices which have duties involving an exercise of some portion of the sovereign power of the State. Sanders v. Belue, 78 S.C. 171, 58 S.E.762 (1907). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its duties or salary, or require qualifications or an oath for the position. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

In a number of previous opinions, we have advised that a member of a county transportation committee would likely be considered an office holder for dual office holding purposes. See S. C. Ops. Att'y Gen. dated September 3, 1994 (members of a county planning commission could not also serve as that county's transportation committee); January 25, 1994 (members of the Florence County Tax Appeal Board or the Florence County Convention & Visitors Bureau could not also serve on the Florence County Transportation Committee); and July 28, 1993 (mayors, members of city councils, members of county councils could not also serve on a county transportation committee).

Furthermore, this Office has advised that a member of a county transportation authority would likely be considered an office holder for dual office holding purposes. See S.C. Ops. Att'y Gen. December 14, 1995. Indeed, in that opinion we addressed the same issue as that presented in your letter. In that opinion, we advised that a person who served simultaneously on the Transportation Committee of Horry County and the Horry County Transportation Authority would contravene the dual office holding prohibition. Id. Consistent with that opinion, we continue to be of the view that service simultaneously on a county transportation committee and a county transportation authority would be prohibited by the dual office holding prohibition of the South Carolina Constitution. Accordingly, service simultaneously on the Dorchester County Transportation Committee and the Dorchester County Transportation Authority would constitute dual office holding.

Very truly yours,

***2** Robert D. Cook

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